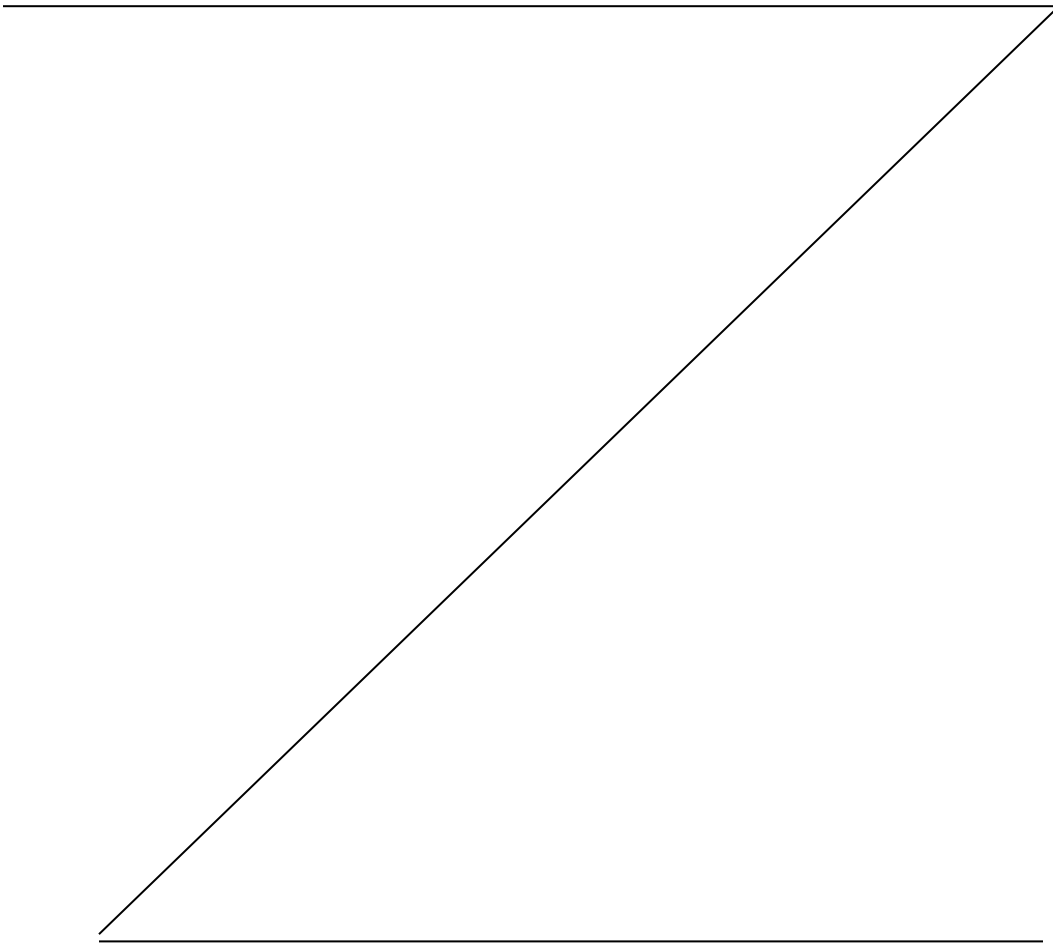


Department of Land and Natural Resources  
Rules Amending Title 13  
Hawaii Administrative Rules  
(Date of Adoption)

1. Chapter 5 of Title 13, Hawaii Administrative Rules, entitled "Conservation District", is amended and compiled to read as follows:



HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

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Historical Note: This chapter is based substantially upon chapter 13-2. [Eff 6/22/81; am and comp 12/27/90; comp 12/5/91; am and comp 12/31/92; R 07/01/1994; am and comp ]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-5-1 Purpose. The purpose of this chapter is to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. [Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-1)

§13-5-2 Definitions. As used herein unless otherwise provided:

~~"Accessory use" means [use of land or of a building or a portion thereof that is customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use]~~ a land use that is conducted on the same or adjoining property or area as the principal land use, and is incidental to and customarily found in connection with the existing land use.

"Aquaculture" means the cultivation and production of aquatic life in a controlled salt, brackish, or fresh water environment.

"Artificial reef" means an area of the sea where objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms.

"Average annual coastal erosion rate" means the average annual rate of shoreline change as determined by the coastal erosion study performed under this chapter.

"Board" means the board of land and natural resources.

"Board permit" means a permit approved by the board of land and natural resources.

"Cabin" means a permanent lodging unit not more than 800 square feet under roof, intended for occasional use in managing large or remote land areas or both; having access by existing foot trail or unimproved access roads; and having no electrical or water utility service. The cabin cannot be used as a principal residence or used for rental purposes.

"Chairperson" means the chairperson of the board of land and natural resources.

"Clearing" means the removal of standing vegetation, with no ground disturbance.

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the shoreline change reference feature. The coastal erosion study shall be carried out by a qualified professional consultant following procedures described in the Hawaii Coastal Hazard Mitigation Guidebook (2005), or other credible publications that provide similar procedures.

"Coastal high hazard area" means an area where wave action or high velocity water or both can cause structural damage in the 100 year flood, primarily defined as an area where a three foot or greater wave height could occur (VE Zone), in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services or commerce in general; provided, however, that the use of land for public utility purposes shall not be considered a commercial purpose.

"Communications systems" means towers, antennas, buildings, cables and other accessory structures for electronic, radio frequency or microwave transmissions or receptions.

"Comprehensive management plan" means a comprehensive plan to manage multiple uses and activities in order to protect and conserve natural and cultural resources.

"Conservation district" means those lands within the various counties of the State and state marine waters bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Departmental permit" means a permit approved by the chairperson.

"Emergency" means an imminently dangerous situation that poses a substantial threat to public health, safety, and welfare as declared by the chairperson or designee.

"Flood zone" means those areas in the "V" or "A" zones that require mandatory flood insurance, in accordance with the Federal Emergency Management Agency-designated federal insurance rate map flood zones.

"Forest reserves" means those lands set aside as forest reserves by the department pursuant to section 183-11, HRS.

"Grading" means the excavation of earth material, fill, or combination thereof.

"Grubbing" means the removal of vegetation by scraping, dislodging, or uprooting vegetation that breaks the topsoil.

~~["Hearing officer" means a person or persons designated or appointed by the board or chairperson to conduct public hearings or proceedings on behalf of the board.]~~

"Historic property" means any building, structure, object, trail, district, area, or site, including heiau and underwater site, [which is over fifty years old] that is significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation.

"Imminently threatened" means an inhabited dwelling, essential cultural or natural resource, or other (non-movable) major structure or public facility that is in danger of destruction or severe damage due to natural hazards. For coastal erosion, "imminently threatened" shall mean a distance of twenty feet or less from an actively eroding shoreline or erosion that will threaten the structure in less than six months.

"Invasive plant" means those plants as defined in chapter 152, HRS, and chapter 4-68, high risk species identified in the Hawaii/Pacific Weed Risk Assessment, as well as other invasive plant species as may be defined by the department.

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other [Privileges,"] Privileges", as originally enacted and amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land, or of any estate or interest in that land.

"Land use" means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than ~~[fourteen]~~ thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

"Management plan" means a ~~[comprehensive] project or site based plan to protect and conserve natural and cultural resources [plan for carrying out multiple land uses]~~.

"Minor" means any use that results in negligible change to or impact to land, a natural resource, or a structure or facility.

"Minor alteration" means work done to an existing structure, facility, or use not to exceed ten per cent of the total replacement cost of the structure, facility, or use.

"Minor repair" means routine work done to an existing structure, facility, or use that involves mostly cosmetic work not to exceed ten per cent of the total replacement cost of the structure, facility, or use.

"Mooring" means a device for holding a vessel in place, where an anchor, concrete block, or similar device is placed or dropped on submerged land with a line attached to a buoy to which the vessel is attached.

~~["Natural area reserve" means those state lands that have been designated as part of the Hawaii natural~~

~~area reserve system by the department pursuant to section 195-4, HRS.]~~

"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals.

"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established ~~[immediately]~~ prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

~~["Plant sanctuary" means an area of land set aside to preserve, protect, conserve, and manage particular plant species.]~~

"Presiding officer" means the person conducting the hearing, which shall be the chairperson or the chairperson's designated representative.

"Public purpose use" means land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity. Examples of public purpose uses include but are not limited to public roads, marinas, harbors, airports, trails, public water works and other utilities, communication systems, watershed and conservation projects, flood or erosion control projects, recreational facilities, and community centers intended to benefit the public in accordance with public policy and the purpose of the conservation district.

"Repair, maintenance, operation" means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty per cent of the replacement value of the structure or use.

"Scenic area" means areas possessing natural, scenic, or wildland qualities.

"Shelter" means a temporary structure used for sheltering from the elements.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest



wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or otherwise defined in §205A-1, HRS.

"Single family residence" means a building or structure used or designated and intended to be used as a home or dwelling place for a family

"Significantly different" means the alteration of an existing structure, facility, or use that increases the size, height, or density of an existing structure, facility, or use by more than fifty per cent.

"Site plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

"State marine waters" means all waters of the State, including the water column and water surface, extending from the ~~[upper reaches of the wash of the waves on shore]~~ shoreline seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Subdivision" means a division of a parcel of land into more than one parcel.

"Submerged lands" means lands from the ~~[upper reaches of the waves on shore]~~ shoreline seaward to the extent of the State's jurisdiction.

"Subzone" means a zone established within the conservation district ~~[which]~~ that is identified by boundaries and resource characteristics pursuant to this chapter.

"Temporary variance" means an exception to zoned use, where good cause is shown and where the proposed variance is for a use determined to be in accordance with good conservation practices.

"Topographical features" means natural and artificial geographical features that appear on a topographical map, such as mountains, hills, valleys, rivers, gulches, streams, wetlands, shorelines, beaches, submerged lands, roads, and other such ~~[structures]~~ features.

"Transient rental" means the use of a single family residence or lodging unit for less than thirty

days, excluding month-to-month rentals, in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.

"Transportation system" includes the means to transport people, animals, or goods or any combination thereof from one place to another, including roads, harbors, airways, and their related facilities.

"Water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g., ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of a surface water collection system) ~~[which]~~ that furnishes a supply of water to ~~[consumers]~~ water users. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards.

"Wilderness area" means an area designated by the department having a diversity and abundance of native flora and fauna, geological formation, or both, largely undisturbed by human influences, in which the introduction of non-indigenous plants and animals, mining, grazing of domestic animals, removal of vegetation, overnight camping, and the construction of roads or structures is prohibited or restricted.

~~["Wildlife sanctuary" means an area of land or water designated by the department to preserve, protect, conserve, and manage wildlife, where hunting and other activities may be restricted.]~~ [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-2)

§13-5-3 Appeals. Any final order of the department or board based upon this chapter may be appealed to the circuit court of the circuit in which the land in question is found. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

Note: See chapter 91, Hawaii Revised Statutes and Hawaii Rules of Civil Procedure.

§13-5-4 Mediation. Upon receipt of a request or on the board's own initiative, the board may request that the petitioner and any affected persons identified as necessary to the resolution of the dispute to participate in mediation. Participation by the parties shall be voluntary. All requests dealing with the same subject matter shall be consolidated in a single mediation. [Eff 12/12/94; comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-5 Amendments. (a) Whenever any landowner or government agency whose property is directly affected by this chapter makes an application to change the boundaries or identified land uses of any subzone, rezone a subzone, establish a new subzone with certain identified land uses or when a person seeks to otherwise amend this chapter, or where the board proposes to make a change or changes itself, such change or changes shall be put in the form of a proposed amendment of this chapter by the applicant, complete with necessary maps, four copies of which shall be filed with the board.

(b) Procedures for amending this chapter are prescribed in section 183C-4, Hawaii Revised Statutes, as amended and chapter 13-1, subpart 3. [Eff 12/12/94; comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.

(b) The board may delegate to the department or a ~~[hearing]~~ presiding officer the authority to adjudicate violations of the provisions of this chapter or any permit issued pursuant thereto.

(c) No permit shall be ~~[processed]~~ approved by the department or board until any violations pending against the subject parcel are resolved.

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

(e) Any terms or conditions imposed by the board for a violation of this chapter shall be recorded with the deed instrument.

(f) For the purpose of providing guidance in the assessment of administrative sanctions and promoting consistency within the department, there shall be adopted by the board an administrative sanctions schedule. [Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-7)

§13-5-7 Nonconforming uses and structures. (a) This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter. The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant.

(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.

(c) Any structures may be subject to conditions to ensure they are consistent with the surrounding environment.

(d) If a nonconforming structure is damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter, except as provided under section 13-5-22(P-9).

(e) Repairs or maintenance of the nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964 or at the time of its inclusion into the conservation district.

(f) The burden of proving that a use or structure is nonconforming rests with the applicant. [Eff and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

## SUBCHAPTER 2

### SUBZONES

§13-5-10 Subzones; generally. (a) There are hereby established subzones within the conservation district, as listed in Exhibit 1, entitled "Subzone ~~[Designations,"]~~ Designations", dated ~~[June 9, 2006.]~~ (new date), which is located at the end of this chapter and made a part of this section. Subzone designations of conservation district lands are delineated on maps on file with the department. ~~[Eff JUL 28 2006]~~ [Eff 12/12/94; am 2/1/99; am 1/27/02; am 4/27/02; am 4/10/03; am 07/28/06]  
] (Auth: HRS §183C-3) (Imp: HRS §183C-4)]

(b) Lands in the conservation district are classified into one of the following subzones:

- (1) Protective;
- (2) Limited;
- (3) Resource;
- (4) General; or
- (5) Special.

(c) Land uses ~~[permitted]~~ identified in a subzone shall be restricted to those uses provided for in this chapter. ~~[Eff 12/12/1994]~~ (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-11 Protective (P) subzone. (a) The objective of this subzone is to protect valuable natural or cultural resources in designated areas such as restricted water-sheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

(b) The (P) subzone ~~[shall]~~ may encompass:

- (1) Lands and waters necessary for protecting watersheds, water sources, and water supplies;
- (2) Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and

designated sites of unique physiographic significance;

- (3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and
- (4) All land encompassing the Northwestern Hawaiian islands except Midway island.

(c) Identified land uses in the protective (P) subzone are restricted to those listed in section 13-5-22. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

(b) The (L) subzone [~~shall~~] may encompass:

- (1) Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention, as determined by the county, state, or federal governments; and
- (2) Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunami, flooding, volcanic activity, or landslides, or which have a general slope of forty [~~percent~~] per cent or more.

(c) [~~Land~~] Identified land uses [~~permitted~~] in the limited (L) subzone are restricted to those listed in section 13-5-23. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-13 Resource (R) subzone. (a) The objective of this subzone is to [~~develop~~], ensure with proper management, [~~areas to ensure sustained~~] the sustainable use of the natural resources of those areas.

(b) The (R) subzone [~~shall~~] may encompass:

- (1) Lands necessary for providing future parkland and lands presently used for national, state,

- county, or private parks;
- (2) Lands suitable for growing and harvesting of commercial timber or other forest products;
  - (3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;
  - (4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;
  - (5) Lands and state marine waters seaward of the ~~[upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves on shore]~~ shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

(c) ~~[Land]~~ Identified land uses ~~[permitted]~~ in the resource (R) subzone are restricted to those listed in section 13-5-24. [Eff 12/12/94; am and comp  
] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-14 General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

(b) The (G) subzone ~~[shall]~~ may encompass:

- (1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and
- (2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

(c) ~~[Land]~~ Identified land uses ~~[permitted]~~ in the general (G) subzone are restricted to those listed in section 13-5-25. [Eff 12/12/94; am and comp  
] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-15 Special (S) subzone. The objective of this subzone is to provide for sustainable use of areas possessing unique developmental qualities ~~[which]~~ that

complement the natural resources of the area. The special subzones are listed in Exhibit 2, entitled "~~Special [Subzones, "] Subzones~~", dated September 6, 1994~~[. "]~~, which is located at the end of this chapter and made a part of this section. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-16 Designation of subzones. (a) A landowner or government agency whose property is directly affected by this chapter may apply to the department to establish a new subzone, rezone an existing subzone, or change a boundary or identified land uses of a subzone. The board can initiate action under this section.

- (b) The application shall include the following:
  - (1) Name of applicant;
  - (2) Name of landowner(s), if different from applicant, or any person or entity with the landowner's written consent;
  - (3) Property description of land being affected by tax map key parcel (metes and bounds may be required when the department deems necessary);
  - (4) Map of area drawn to scale;
  - (5) Background of applicable land use commission petition, including a final decision and order (for new subzone designations);
  - (6) Existing subzone classification or land use zoning designations of subject property and surrounding properties;
  - (7) Geographic characteristics:
    - ~~[a]~~ (A) General topography, geologic conditions, and slope; and
    - ~~[b]~~ (B) Soils types and productivity rating (e.g., Agricultural Lands of Importance to the State of Hawaii (ALISH) and proposed Land Evaluation and Site Assessment (LESA));
  - (8) Climatic characteristics (e.g., rainfall, predominant wind direction annually);
  - (9) Hydrological characteristics (e.g., surface water, groundwater, drainage patterns) and applicable water area classification, if



- applicable, (e.g., restricted watershed, groundwater recharge area);
- (10) Biological (flora and fauna) characteristics (e.g., vegetation, wildlife, specific identified species, or habitat of identified threatened or endangered species);
  - (11) A list of historic properties in the project area;
  - (12) Scenic or visual resources (e.g., significant view planes and geological features);
  - (13) Infrastructure evaluations (e.g., roads and access, water systems, sewage systems, drainage systems, recreational facilities, community population, income and household characteristics, utilities availability);
  - (14) Review of property characteristics in relation to subzone objectives;
  - (15) Evaluation and recommendation of appropriate subzone designation and boundary characteristics; and
  - (16) Application fee of [~~\$100~~] \$500 and public hearing fee of [~~\$250~~] \$500.

(c) The change in boundary or land use shall be put in the form of a proposed administrative rule change by the applicant. Designation of subzones shall be processed as an administrative rule amendment, and, as such, shall be in accordance with departmental rules and applicable statutes, and shall include a public hearing. [Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

Note: See §13-5-5.

§13-5-17 Boundary determinations; criteria. (a) Prior to the department receiving for processing any application for a permit, if the applicant's proposed land use lies within fifty feet of a subzone boundary, the applicant shall first notify the department of the intended use and seek a determination of the precise boundary of the subzone with respect to the parcel in question. Applications shall be accompanied by a fee of [~~\$50~~] \$100.

(b) The notification shall include all relevant information, including topographical maps, subzone maps, and tax maps.

(c) The department shall have thirty days within which to issue its determination, after which the party seeking the permit is free to make application.

(d) The applicant can appeal the departmental determination to the board. The board shall resolve any uncertainty regarding the location of the subzone boundary and the board's determination shall be final.

(e) In all cases, the determination of subzone boundaries shall utilize the following criteria:

- (1) The boundary shall follow natural or fixed physical features;
- (2) The boundary shall be defined by a series of straight lines;
- (3) Where coterminous with forest reserve boundaries, the boundary shall be determined by metes and bounds descriptions of the forest reserve; ~~[or]~~
- (4) Where a subzone boundary follows an elevation, the boundary shall be determined by reference to topographical maps or other evidence that may be used to establish elevation; or
- (5) The boundary shall be defined by the metes and bounds of property boundaries. [Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

### SUBCHAPTER 3

#### IDENTIFIED LAND USES AND REQUIRED PERMITS

§13-5-22 Identified land uses in the protective subzone. (a) If a proposed use in the protective subzone is not presented below, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule amendment to have the proposed use added to the identified land uses.

(b) Identified land uses in the protective subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses beginning with letter (A) require no permit from the department or board (See §13-5-30(a));
- (2) Identified land uses beginning with letter (B) require a site plan approval by the department;
- (3) Identified land uses beginning with letter (C) require a departmental permit; and
- (4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

#### P-1 DATA COLLECTION

- (A-1) Basic data collection, research, education, and resource evaluation [~~which~~] that is temporary (less than thirty days) or results in negligible ground disturbance (small gages or monitoring devices) or does not involve a land use (e.g., botanical, archaeological, faunal surveys).
- (B-1) Basic data collection, research, education, and resource evaluation [~~as identified in the exempt classes established in section 11-200-8~~] that results in a minor disturbance to natural resources or land (e.g., corings, excavations, etc.).
- (C-1) Basic data collection, research, education, and resource evaluation [~~which~~] that involves a land use [with incidental] causing ground disturbance from installation of equipment (e.g., [rain gauges or] meteorological towers, radio towers, or test wells).
- (D-1) [~~Basic data~~] Data collection, research, education, and resource evaluation that involves [~~a~~] permanent facilities or structures larger than 500 square feet or a land use causing significant ground disturbance or impact to a natural resource [e.g. exploratory wells].

P-2 FISHPONDS

- ~~[(A-1) Repair, strengthening, reinforcement or maintenance of a fishpond under an approved conservation district use permit and approved management plan.]~~
- (D-1) Restoration ~~[or repair]~~ of a fishpond ~~[under an approved management plan,]~~ where restoration is the act or process of returning the property to a state of utility for cultural, economic, subsistence, or demonstration purposes through restoration ~~[repair]~~ or alteration ~~[which]~~ that makes possible an efficient contemporary use, such as aquaculture. A management plan is also required.

P-3 KULEANA LAND USES

- (D-1) Agriculture and a single family residence, if applicable, when such land use was historically, customarily, and actually found on the property. Agriculture means the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, and subsistence livestock.

P-4 ~~[LANDSCAPING,]~~ REMOVAL OF ~~[NOXIOUS]~~ INVASIVE PLANTS

- (A-1) Removal of ~~[noxious]~~ invasive plants and trees for maintenance purposes ~~[without the use of power tools]~~ including clearing with power hand tools or herbicides that ~~[does not result]~~ results in no, or [significant] only minor ground disturbance ~~[(e.g. weeding)]~~. [Noxious] Invasive plants and trees are defined in chapter 152, HRS, and chapter 4-68, high risk species identified in the Hawaii/Pacific Weed Risk Assessment, [subtitle 6.] as well as other invasive species as may be defined by the department. The department or board reserves the right to

require site plan, departmental or board approval if it is determined that the proposed action may cause secondary impacts on natural or cultural resources. For existing developed lots, compliance with section 13-5-23(L-3) satisfies the requirements of this section.

- ~~[(C-1) Landscaping, defined as alteration (including clearing) of plant cover. Such alteration shall be limited to plant materials that are endemic or indigenous and similar in character and appearance to existing vegetation in the surrounding area. Natural vegetative plant cover, where disturbed, shall be restored or replaced with endemic or indigenous planting. The introduction of alien plant species is prohibited in the protective subzone.]~~

#### P-5 MOORINGS AND AIDS TO NAVIGATION

- (C-1) Moorings and aids to navigation. This requirement is satisfied by obtaining a permit pursuant to chapter 200, HRS.

#### P-6 PUBLIC PURPOSE USES

- (D-1) ~~[Land uses undertaken by the State of Hawaii or the counties to fulfill a mandated governmental function, activity, or service for public]~~ Land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity. Examples of public purpose uses include but are not limited to public roads, marinas, harbors, airports, trails, public water works and other utilities, energy generation from renewable sources, communication systems, watershed and conservation projects, flood or erosion control projects, recreational facilities, and community centers intended to benefit [and] the public in accordance with public policy and the purpose of the

conservation district. [~~Such land uses may include transportation systems, water systems, communications systems, and recreational facilities.~~

- ~~(D-2) Transportation systems, transmission facilities for public utilities, water systems, energy generation facilities utilizing the renewable resources of the area (e.g. hydroelectric or wind farms) and communications systems and other such land uses which are undertaken by non governmental entities which benefit the public and are consistent with the purpose of the conservation district.~~

~~P-7 SANCTUARIES~~

- ~~(D-1) Plant and wildlife sanctuaries, natural area reserves (see chapter 195, HRS) and wilderness and scenic areas, including habitat improvements under an approved management plan.]~~

[~~P-8~~] P-7 SIGNS

- (B-1) Signs, including safety signs, danger signs, no trespassing signs, and other informational signs. No signs shall exceed twelve square feet in area and shall be non-illuminated. All signs shall be erected to be self-supporting and be less than or equal to eight feet above finished grade.

[~~P-9~~] P-8 STRUCTURES AND LAND USES, EXISTING

- (A-1) [~~Replacement or reconstruction of existing structures and facilities as identified in the exempt classes established in section 11-200-8, except as provided in section 13-5-37 where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity,~~

~~density, height, and dimensions as the structure replaced.] Minor repair or maintenance of an existing structure, facility, or use.~~

~~[(C-1)]~~ (B-1) Demolition, removal, minor repair, or minor alteration of existing structures, facilities, land, and equipment. Any historic property shall be evaluated by the department for historical significance.

(B-2) Replacement or reconstruction of existing structures and facilities under a previously approved conservation district use permit where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced. Reconstruction or replacement of structures and facilities shall be subject to development standards set forth in this chapter, and other requirements as applicable, such as a county building permit, and shoreline certification where required. No enlargement of the structures and facilities is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct structures and facilities within two years of the demolition or destruction of structures and facilities.

(B-3) Replacement or reconstruction of existing nonconforming structures and facilities, where the new structures and facilities will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the residence replaced. Note: Reconstruction or replacement of structures and facilities shall be subject to development standards set forth in this chapter, and other requirements as applicable, such as a county building permit, and shoreline certification, where required. No enlargement of the structures

and facilities is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct structures and facilities within two years of the demolition or destruction of structures and facilities.

(B-4) Installation of emergency warning systems (e.g., tsunami warning sirens).

(C-1) Major alteration or expansion of existing structures, facilities, uses, and equipment.

~~[(C-2)]~~ (D-1) [Operations, repair, maintenance, or renovation] Alteration or expansion of existing structures, facilities, equipment, or topographical features which are significantly different from the original [permit or which are different from the department approved construction plans, where applicable.] use or significantly different than what was allowed under the original permit. When county permit(s) are required ~~[the department shall approve]~~ for the associated plan(s) [-], the department's approval shall also be required.  
Note: ~~[for]~~ For nonconforming uses, see section 13-5-37.

~~[(D-1) Demolition, grading, removal or alteration of topographic features.]~~

~~[P-10]~~ P-9 STRUCTURES, ACCESSORY

~~[(A-1)]~~ (B-1) Construction or placement of structures accessory to existing facilities [as identified in the exempt classes established in section 11-200-8] or uses.

~~[P-11]~~ P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY

(C-1) Consolidation and resubdivision into an equal number of lots that does not result in increased density.



- (C-2) Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone. Consolidation followed by resubdivision shall constitute a subdivision.
- (D-1) Subdivision of property into two or more legal lots of record [~~which~~] that serves a public purpose and is consistent with the objectives of the subzone.

[~~P-12~~] P-11 TREE REMOVAL

- (A-1) Removal of dead, dying, or diseased[+] trees for non-commercial purposes.  
~~[(1) Non native or invasive trees; or~~  
~~(2) Native trees less than six inches in diameter measured at ground level.]~~
- (A-2) Removal of trees [~~which~~] that pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the [tree] trees [~~if it was six inches or greater in diameter measured at ground level~~].
- (B-1) Selective removal of individual trees for non-commercial purposes provided that each tree is replaced on a one-to-one-basis with trees that are appropriate to the site location with preference to trees that are endemic or indigenous to Hawaii.
- ~~[(C-1) Removal of invasive not more than five trees or more than five trees less than six inches in diameter measured at ground level;]~~
- ~~[(D-1) Removal of more than five trees, six inches or greater in diameter measured at ground level.]~~

P-12 POWER GENERATION FROM RENEWABLE RESOURCES

- (D-1) Hydroelectric, wind generation, ocean thermal energy conversion, wave, solar and other power generation facilities from natural

resources, except geothermal; includes generation, conversion, and transmission facilities and access roads.

#### P-13 LAND AND RESOURCE MANAGEMENT

- (A-1) Basic land and resource management, including routine weed control, clearing of understory, out-planting of rare plants, predator and ungulate control, tree pruning, fence maintenance, etc.
- (A-2) Clearing of sand or silt from stream mouths, canals, drainage pipes, or other features for state or county maintenance, provided that the sand removed shall be placed on adjacent shoreline areas unless the placement would result in significant turbidity, as determined by the department.
- (B-1) Clearing land for fire pre-suppression and prevention, under a fire buffer plan approved by the department.
- (C-1) Installation of a new fence or shelter (may include fences for the protection of native or cultural resources).
- (C-2) Erosion control, including replanting of trees and groundcover, placement of biodegradable synthetic materials, construction of minor swales and check dams.
- (D-1) Cabin.
- (D-2) Road construction and major erosion control projects.

#### P-14 TELECOMMUNICATIONS

- (B-1) Installation of new antenna on an existing telecommunications tower, including support equipment.
- (C-1) Construction of new tower at an existing site that is lower than existing towers and does not result in adverse visual impacts, and that is part of a site and system master plan.
- (D-1) New telecommunications facility.

P-15 SHORELINE EROSION CONTROL

(D-1) Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters. Requires a shoreline certification.

P-16 BEACH RESTORATION

(C-1) Sand placement not to exceed 10,000 cubic yards per occasion, with minor sand retention structures, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.

(D-1) Sand placement in excess of 10,000 cubic yards including structures necessary to retain sand, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.  
[Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-23 Identified land uses in the limited subzone. (a) In addition to the land uses identified herein, all identified land uses and their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the limited subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses beginning with letter (A) require no permit from the department or board (See Section 13-5-30(a));
- (2) Identified land uses beginning with letter (B) require a site plan approval by the department;
- (3) Identified land uses beginning with letter (C) require a departmental permit; and
- (4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

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#### L-1 AGRICULTURE

- (C-1) Agriculture within an area of one acre or less, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry.
- (D-1) Agriculture within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan is also required.

#### ~~[L-2 BOTANICAL GARDENS AND PRIVATE PARKS]~~

- ~~(D-1) Botanical gardens and private parks under an approved management plan.~~

#### ~~L-3 EROSION CONTROL~~

- ~~(D-1) Erosion control, flood control, and other hazard prevention devices or facilities.~~

#### ~~[L-4] (L-2) LANDSCAPING [AND REMOVAL OF NOXIOUS PLANTS]~~

- ~~[(C-1)]~~ (B-1) Landscaping, defined as alteration (including clearing and tree removal) of plant cover including clearing with power

hand tools or herbicides that results in no or only minor ground disturbance, in an area less than 2,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii.

(C-1) [Removal of noxious plants for maintenance purposes in an area less than ten thousand square feet that results in significant ground disturbance (e.g. clearing or grubbing).] Landscaping (including clearing, grubbing, and tree removal) of plant cover in an area of less than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii.

(D-1) [Removal of noxious plants for maintenance purposes in an area of more than ten thousand square feet that results in significant ground disturbance (e.g. clearing or grubbing).] Landscaping (including clearing, grubbing, grading, and tree removal) in an area of more than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii.

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~~[L-5 SEAWALLS AND SHORELINE PROTECTION~~

~~(D-1) Seawalls, shoreline protection devices, and shoreline structures.]~~

~~[(L-6)]~~ (L-3) SINGLE FAMILY RESIDENCE

(D-1) A single family residence in a ~~[floodplain]~~ flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM) that conforms to applicable county regulations regarding the National Flood Insurance Program and single

family residential standards as outlined in this chapter.

~~[L-7] STRUCTURES, ACCESSORY~~

~~(B-1) Construction or placement of structures accessory to an existing structure, building, or facility under an existing conservation district use permit. Accessory uses shall be allowed only if they are consistent with the purpose of the conservation district.]~~  
[Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-4)]

§13-5-24 Identified land uses in the resource subzone. (a) In addition to the land uses identified herein, all identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in ~~[sections]~~ section 13-5-22 or ~~[23]~~section 13-5-23, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the resource subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses beginning with letter (A) require no permit from the department or board (See Section 13-5-30(a));
- (2) Identified land uses beginning with letter (B) require a site plan approval by the department;
- (3) Identified land uses beginning with letter (C) require a departmental permit; and
- (4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

R-1 AQUACULTURE

- (D-1) Aquaculture under ~~[an approved]~~ a management plan.

R-2 ARTIFICIAL REEFS

- (D-1) Artificial reefs.

R-3 ASTRONOMY FACILITIES

- (D-1) Astronomy facilities under ~~[an approved]~~ a management plan.

R-4 COMMERCIAL FORESTRY

- (D-1) ~~[Commercial]~~ Sustainable commercial forestry under ~~[an approved]~~ a management plan.

~~[R-5 LANDSCAPING~~

- ~~(B-1) Landscaping, defined as alteration of plant cover, including trees, in an area of ten thousand square feet or less.~~
- ~~(C-1) Landscaping, defined as alteration of plant cover, including trees, in an area of more than ten thousand square feet.]~~

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~~[R-6]~~ R-5 MARINE CONSTRUCTION

- ~~[(C-1)]~~ (A-1) Maintenance dredging not to exceed the dredging limits for the area as previously authorized ~~[by board permit]~~ and dredged.
- (D-1) ~~[Marine construction, dredging, filling, or any combination thereof of submerged lands.]~~  
Dredging, filling, or construction on submerged lands, including construction of harbors, piers, marinas, and artificial reefs. This does not include dredging for routine maintenance and shoreline erosion control or beach restoration projects.

~~[(R-7)]~~ R-6 MINING AND EXTRACTION

(D-1) Mining and extraction of any material or natural resource.

~~[(R-8)]~~ R-7 SINGLE FAMILY RESIDENCE

(D-1) A single family residence that conforms to design standards as outlined in this chapter.

R-8 WILDERNESS CAMP

(D-1) Establishment providing educational and recreational programs for youth and adult groups, including overnight accommodations in tents or shelters. Facilities may include unimproved access road, restrooms, shelters, and one or more minor structures for housing, administration, and maintenance facilities. Dwellings and single-family residences are not allowed.

R-9 CAMP SITES

(D-1) For profit overnight camping facilities with parking accommodations. Facilities may include access road, restrooms, shelters, and one or more minor structures for housing administration and maintenance facilities.

R-10 BOTANICAL GARDENS, PRIVATE PARKS, AND NATURE CENTERS

(D-1) For a profit or non-profit establishment featuring plants or other natural resources and offering tours or other nature-based, outdoors educational and recreational activities, primarily during daylight hours. Facilities may include access road, restrooms, shelters, and one or more minor structures for housing, administration, and maintenance facilities. [Eff 12/12/94: am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)



§13-5-25 Identified land uses in the general subzone. (a) In addition to the land uses identified [~~herein~~] in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective, limited and resource subzones also apply to the general subzone, unless otherwise noted.

(b) If a proposed use [~~subzone~~] is not presented below or in [~~sections~~] section 13-5-22, [23] Section 13-5-23, or [24] Section 13-5-24, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the general subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses with the prefix (A) require no permit from the department or board (See Section 13-5-30(a));
- (2) Identified land uses with the prefix (B) require site plan approval by the department;
- (3) Identified land uses with the prefix (C) require a departmental permit; and
- (4) Identified land uses with the prefix (D) require a board permit and, and where indicated, a management plan.

#### G-1 OPEN SPACE

- (D-1) Land uses promoting natural open space and scenic value including those with accessory structures; provided, however, that no new golf courses shall be developed in the conservation district.

#### G-2 LAND USES NOT [~~PREVIOUSLY~~] OTHERWISE IDENTIFIED

- (D-1) Land uses not [~~previously~~] otherwise identified in [sections] section 13-5-22, [23] Section 13-5-23, or [24] Section 13-5-24, which are consistent with the objectives of the general subzone. [Eff 12/12/94; am

and comp ] (Auth: HRS  
§183C-3) (Imp: HRS §183C-4)

#### SUBCHAPTER 4

#### PROCEDURES FOR PERMITS, SITE PLAN APPROVALS, AND MANAGEMENT PLANS

§13-5-30 Permits, generally. (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans, and temporary variances. Departmental permits and emergency permits are processed by the department and approved by the chairperson. Site plans are processed by the department and approved by the chairperson~~[7]~~ or ~~[his]~~ a designated representative. Prior to proceeding with land uses for which no permit is required (identified land uses beginning with the letter "A"), a written concurrence that the proposed land use does not require a permit must be obtained from the department.

(b) Unless provided in this chapter, land uses shall not be undertaken in the conservation district. The department shall regulate land uses in the conservation district by issuing one or more of the following approvals:

- (1) Departmental permit (see section 13-5-33);
- (2) Board permit (see section 13-5-34);
- (3) Emergency permit (see section 13-5-35);
- (4) Temporary variance (see section 13-5-36);
- ~~[(5) Nonconforming uses (see section 13-5-37);~~
- ~~[(6)]~~ (5) Site plan approval (see section 13-5-38);
- or
- ~~[(7)]~~ (6) Management plan (see section 13-5-39).

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

- (1) The proposed land use is consistent with the purpose of the conservation district;

- (2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;
- (3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone ~~[Management,"]~~ Management", where applicable;
- (4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;
- (5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
- (6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;
- (7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
- (8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.
- (9) Renewable energy projects that are properly sited and minimize impacts to natural, cultural and recreational resources shall be given preference in the decision-making process.

The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria.

~~[(d) For uses on submerged lands and in state marine waters the requirements of this chapter are satisfied by complying with provisions of chapters 171 (public lands), 184 (state parks), 187A, 188, 189, and 190 (marine life management), 190D (ocean leasing), 195 (natural area reserves system), 195D (conservation of aquatic life and wildlife), and 200 (boating and ocean~~

~~recreation), or their implementing rules.]~~ [Eff  
12/12/94; am and comp ] (Auth: HRS §183C-  
3) (Imp: HRS §§183C-3, 183C-6)]

Note: For regulation of activities in:  
State Parks; see Chapter 13-146.  
Forest Reserves; see Chapter 13-104.  
Natural Area Reserves System; see Chapter 13-  
209.  
Unencumbered Lands; see Chapter 13-221.  
Marine Life Conservation Districts; see Title  
13, Subtitle 4, Part 1.  
Marine Fisheries Management Areas; see Title  
13, Subtitle 4, Part 2.  
Freshwater Fisheries Management Areas; see  
Title 13, Subtitle 4, Part 3.  
Ocean Waters, Navigable Streams and Beaches;  
see Title 13, Subtitle 11, Part 3.

§13-5-31 Permit applications. (a) Applications  
for all permits and approvals provided for in this  
chapter shall be submitted to the department on the  
form prescribed by the department. The application  
shall contain:

- (1) A draft or final environmental assessment,  
[or] draft or final environmental impact  
statement, or a request for an exemption from  
the chapter 343, HRS, process, as applicable;
- (2) Associated plans such as location map, site  
plan, floor plan, elevations, and landscaping  
plans drawn to scale;
- (3) The proposed land use shall address their  
relationship with county general plans and  
development plans;
- (4) Any other information as determined by the  
department;
- (5) Signature of the landowner;
- (6) Applicable fees; [and]
- (7) A minimum of twenty copies of the application  
and all attachments[-]; and
- (8) A certified shoreline.

Any of these application requirements may be waived or exempted at the discretion of the department for good cause shown upon the filing, at the time of the application, a justification or good cause, for the waiver or exemption.

(b) For [~~State~~] state and public lands, the State of Hawaii or government entity with management control over the parcel shall sign as landowner. For private lands with multiple landowners of the subject parcel(s), the application shall be signed by landowners whose property interests constitute or exceed eighty-five [~~percent~~] per cent of the fee ownership of the subject parcel(s).

(c) [~~Any~~] Except for state-owned land, any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness within thirty days from the date that the application was filed with the department. If it is found to be incomplete, the applicant shall be so notified by a letter stating the reasons therefor. If an application is accepted for processing, the applicant shall be notified by letter stating the commencement and completion dates for the processing of the application. The one hundred [~~and~~] eighty day time period provided by law shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(d) If within one hundred [~~and~~] eighty days, or a time period as provided by law, after the department's acceptance of a completed application, the department, the chairperson, or the board shall fail to render a decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to the conditions contained in section 13-5-42.

(e) No permit application shall be [~~processed~~] approved by the department or board until any violations pending against the subject parcel are resolved.

(f) The burden of proving that a parcel of land is a kuleana rests with the applicant. The following information shall accompany an application in which the applicant is requesting nonconforming use of kuleana

land as defined in this chapter:

- (1) Deed of property;
- (2) Land Commission Award (LCA) number;
- (3) Land Patent Grant documentation;
- (4) Documentation showing current ownership of the kuleana;
- (5) Tax map key number;
- (6) Documentation showing modern metes and bounds of the kuleana (if required by the department);
- (7) Identify legal access to the kuleana; and
- (8) ~~[Identification]~~ Proof of uses to which the kuleana land was historically, customarily, and actually found on the particular lot including, if applicable, a single family residence. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-5, 183C-6)\_

§13-5-32 Fees. Each application shall be accompanied by ~~[such]~~ the filing fees as specified in this chapter. All fees shall be in the form of ~~[cash,~~ certified or cashier's check, and payable to the State of Hawaii. The application fee for state, county, or federal projects shall be waived. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-33 Departmental permits. (a) Applications for departmental permits shall be submitted to the department in accordance with section 13-5-31.

(b) In those applications whose identified land uses require a combination of board permit(s) and departmental permit(s), a board permit shall be required covering all of the proposed uses.

(c) The application for a departmental permit shall be accompanied by:

- (1) An application fee of ~~[\$50]~~ \$250; and
- ~~[(2) A public hearing fee of \$250, if applicable.]~~
- ~~[(d) A public hearing, if applicable, shall be held in accordance with section 13-5-40.]~~

~~[(e)]~~ (d) The department shall provide notice of the application for a departmental permit through the publication of a notice in the office of environmental quality control (OEQC) bulletin. The OEQC disclosure shall identify:

- (1) Type of permit sought;
- (2) Applicant;
- (3) Location of affected land (by island, district, and tax map key number);
- (4) Preliminary environmental determination; and
- (5) A brief description of their proposed use, including specifically any proposed use of public lands.

(f) Interested persons who wish to comment upon or receive notice of the department's determination on a particular application shall submit their comments or written request for notification during the thirty day comment period after the notice appears in the OEQC bulletin for a preliminary environmental determination. The request for notification shall include:

- (1) The name and address of the requestor;
- (2) The departmental permit for which the requestor would like to receive notice of departmental determination; and
- (3) The date the notice was published in the OEQC bulletin.

The department is not obligated to notify any person of its determination who does not strictly comply with this section. The department will use its best efforts to notify any interested person who complies with this section. However, failure of the department to comply with this subsection shall not invalidate any departmental permit issued under this chapter.

(g) ~~[Any person]~~ The permit applicant or any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the use that their interest is so clearly distinguishable from that of the general public may appeal the chairperson's decision by filing a written appeal to the department not later than fourteen days after the date of the department's determination of the departmental permit. The written appeal shall provide all relevant information and shall

state with specificity the reasons for the appeal.

(h) Where the appellant under subsection (g) sets forth facts or law, or both, showing that the chairperson's decision is arbitrary and capricious, the board may affirm, amend, or reverse the decision of the chairperson, or order a contested case hearing or other procedure to be conducted prior to the board's decision on the appeal. All contested case hearings or other proceedings so ordered by the board shall be conducted in accordance with chapter 13-1.

(i) Except as provided in subsection (h), no contested case hearings shall be provided for departmental permits.

(j) A board permit shall be required when the chairperson determines that the scope of the proposed use~~[, the necessity of an environmental impact statement,]~~ or the public interest requires a board permit. [Eff 12/12/94; am and comp

] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

§13-5-34 Board permits. (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.

(b) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(c) The application for a board permit shall be accompanied by:

- (1) ~~[An application fee of \$100, plus an additional \$100 per potential developed acre, or major fraction thereof,]~~ The application fee which is equal to 0.025 per cent of the total project cost, but no less than \$250, up to a maximum of [\$2,000] \$2,500; and
- (2) A public hearing fee of ~~[\$250]~~ \$500, if applicable.

(d) Contested case hearings, if applicable, and as required by law, shall be held as provided in chapter 13-1~~[, subpart 5]~~. The aggrieved appellant or person who has demonstrated standing to contest the board action may request a contested case hearing pursuant to chapter 13-1. [Eff 12/12/94; am and comp  
] (Auth: HRS §183C-3) (Imp: HRS §183C-6)



§13-5-35 Emergency permits. (a) Notwithstanding any provision of this chapter, the chairperson or designee may authorize any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare is alleviated (e.g., erosion control), except that a land use may be permitted where there are no other reasonable alternatives to alleviate the emergency and the proposed land use is consistent with the objectives of the subzone and the criteria of the rules. The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department. In the event of an emergency, repair and reconstruction shall be expedited via the issuance of an emergency permit.

(b) [The] Where a natural disaster has occurred, such as a hurricane, flood, tsunami, volcanic eruption, earthquake, fire, or landslide, the following actions shall be processed as a departmental permit:

- (1) Repair or reconstruction of a structure to [the same] a similar condition as existed prior to the damage. Permits under this clause shall be expedited by the department;
- (2) Reconstruction involving minor deviations [(no more than twenty per cent increase in footprint) of the damaged structure, such as enlargements of a dwelling or additions to the structure; and] of the damaged structure, including but not limited to minor expansions or minor additions to a dwelling or structure; and
- (3) The chairperson may designate a time frame during which authorization shall not be required for activities exempt from the building permit requirements as set forth in the applicable county building code, provided that repairs exempt from the building code requirements shall not include any addition,

change, or modification in construction or land use.

(c) The department may elect to route certain applications as board permits. This may occur when an application involves one or more of the following situations:

- (1) ~~[Substantial]~~ Significant enlargement or modification of a structure [~~(twenty per cent or more)~~];
- (2) Change in land use;
- (3) Substantial change in the height of the structure (for example, second floor additions); or
- (4) Where the department determines that a potential for substantial adverse environmental impact exists.

(d) The repair, reconstruction, or modification under this chapter are only for land uses that have been established or are legally nonconforming. If there is a question regarding legality, the burden of proof shall be upon the applicant. For nonconforming structures, this section shall not supersede the provisions contained in section 13-5-37.

(e) ~~[Repair]~~ Application for the repair and replacement of any structure shall not be approved by the department until any violations pending against the parcel are resolved [~~being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved~~].

(f) This section shall be effective for the period of time specified by the chairperson.

(g) The application fee for an emergency permit shall be waived. [Eff 12/12/94; am and comp

] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-5, 183C-6)

§13-5-36 Temporary variance. (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the board determines that:

- (1) There are special and unique circumstances applying to the proposed land use at its particular location;
  - (2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and safety or that there are no other reasonable economic uses of the property;
  - (3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and
  - (4) The variance and any conditions imposed on the land use authorized by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land use is located.
- (b) No temporary variance shall be approved for more than one year, and no extension thereof or reapplication [~~therefore~~] therefor shall be approved.
- (c) Temporary variances require a board permit.
- (d) This section shall not apply to the removing, harvesting, dredging, mining, or extraction of any material or natural resource on land.
- (e) The application for temporary variance shall be accompanied by:
- (1) An application fee of [~~\$100~~] \$250.
  - (2) A public hearing fee of [~~\$250~~] \$500, if applicable. [Eff 12/12/94; am and comp  
] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

~~§13-5-37 Nonconforming uses. (a) This chapter shall not prohibit the continuance of, or repair of nonconforming uses as defined in this chapter. The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant.~~

~~(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.~~

~~(c) Any structures may be subject to conditions~~

~~to ensure they are consistent with the surrounding environment.~~

~~(d) If a nonconforming structure is destroyed by any means to an extent of more than fifty per cent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.~~

~~(e) Repairs or maintenance reconstruction of the nonconforming structure shall not exceed the size, height or density of the structure which existed immediately prior to October 1, 1964 or at its inclusion into the conservation district. [Eff 12/12/94; R ] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)]~~

§13-5-38 Site [Plan Approval] plan approvals.

(a) Where required, an applicant shall submit site plans, including construction, grading, site restoration, landscaping, fire protection, or any other plans to the department for its review and approval. All plans shall first obtain department approval before they are submitted for approval by the pertinent state and county agencies.

(b) An application for a site plan approval shall be accompanied by an application fee of \$50. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

§13-5-39 Management plan approvals. ~~[(a)]~~ Where required, management plans shall be submitted with the board permit application and shall include the requirements listed in Exhibit 3, entitled "Management Plan [~~Requirements,~~"] Requirements", dated September 6, 1994~~[-"]~~, which is located at the end of this chapter and made a part of this section.

~~[(b) An annual report to the department is required which shall include the status of compliance of the permit conditions and the implementation of land uses pursuant to the approved management plan schedule.] [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-6)]~~

§13-5-40 Hearings. (a) Public hearings shall be held:

- (1) On all applications requiring a board permit for a proposed use of land for commercial purposes;
- (2) On changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter;
- (3) On applications requiring a board permit in the protective subzone; and
- (4) On all applications determined by the chairperson that the scope of proposed use, or the public interest requires a public hearing on the application.

(b) The hearing shall be held in the county in which the land is located. The hearing may be conducted by the board or may be delegated to an agent or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the property is located. Notice of hearing on changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter shall be given not less than thirty days prior to the date set for the hearing during three successive weeks statewide and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff 12/12/94; am and comp

] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4, 183C-6)

§13-5-41 Single family residences[; standards].

(a) Single family residential uses approved by the board shall comply with the design standards contained

in Exhibit 4, entitled "Single Family Residential [~~Standards,"~~] Standards", dated [~~September 9, 2005."~~] (new date), except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen per cent. Exhibit 4 is located at the end of this chapter and made a part of this section.

(b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record.

(c) No single family residence shall be allowed in the conservation district where there is an existing residence in a different state land use district zoned for residential, rural, or agricultural use on another portion of the same legal lot of record. [Eff 11/14/05; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-41.1 Fire protection zone. Where requested by the department, fire protection zones shall be established and shall include the requirements listed in Exhibit 5, entitled "Fire Protection Zone Standards", dated (new date), which is located at the end of this chapter and made a part of this section. [Eff and comp ] Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use allowed within the conservation district is subject to the following standard conditions:

- (1) The [~~applicant~~] permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
- (2) The [~~applicant~~] permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property

damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

- (3) The ~~[applicant]~~ permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
- (4) The ~~[applicant]~~ permittee shall comply with all applicable department of health administrative rules;
- (5) The single family ~~[dwelling]~~ residence shall not be used for short-term rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of camp sites approved by the board;
- (6) The ~~[applicant]~~ permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- (7) Before proceeding with any work authorized by the department or the board, the ~~[applicant]~~ permittee shall submit four copies of the construction plans and specifications to the chairperson or ~~[his]~~ an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the ~~[applicant]~~ permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
- (8) ~~[Any]~~ Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and ~~[, unless otherwise~~

- ~~authorized,~~] shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed;
- (9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
  - (10) The ~~[applicant]~~ permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
  - (11) In issuing the permit, the department and board have relied on the information and data ~~[which]~~ that the ~~[applicant]~~ permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
  - (12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the board of water supply;
  - (13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
  - (14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the ~~[applicant]~~ permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
  - (15) Obstruction of public roads, trails, lateral beach access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the ~~[applicant]~~ permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;



- (16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;
- (17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- (18) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
- (19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
- (20) Animal husbandry activities shall be limited to sustainable levels in accordance with good soil conservation and vegetation management practices; ~~[and]~~
- (21) The permittee shall obtain a county building or grading permit or both for the use when applicable;
- (22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
- (23) Artificial light from exterior lighting fixtures, including but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
- (24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the

satisfaction of the department, including but not limited to avoidance, relocation or other best management practices;

(25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and

~~[(21)]~~ (26) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

(c) Deviation from any of the conditions, standards, or criteria provided ~~[herein]~~ in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

- (1) The deviation is necessary because of the lack of practical alternatives;
- (2) The deviation shall not result in any substantial adverse impacts to natural resources;
- (3) The deviation does not conflict with the objective of the subzone; and
- (4) The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before ~~[such a]~~ the deviation occurs constitutes cause for permit revocation. [Eff 12/12/94; am and comp ]  
Auth: HRS §183C-3) (Imp: HRS §§183C-4, 183C-6)

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up

to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) ~~[All]~~ Unless otherwise authorized, all time extensions shall be submitted to the department [thirty days before] prior to the expiration deadline. [If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the board for review.]

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

~~[e]~~(f) Temporary variances are excluded from this provision. [Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-44 Revocation of permits. In any case where an permittee has failed to comply with ~~[any]~~ one or more of the conditions contained in a permit, the board may direct the chairperson to revoke the permit. [Eff 12/12/94; am and ren §13-5-44 and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-7)

§13-5-45 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff 12/12/94; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-3)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Laura H. Thielen, Chairperson  
Board of Land and Natural  
Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General

## Exhibit 1

Subzone Designations: [~~June 9, 2006~~] (new date)

- (1) "H-1, Makalawena," Hawaii, June 4, 1978
- (2) "H-2, Keahole Point," Hawaii, August 23, 1985
- (3) "H-3, Mahukona," Hawaii, August 23, 1985
- (4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
- (5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
- (6) "H-6, Kiholo," Hawaii, August 23, 1985
- (7) "H-7, Kailua," Hawaii, [~~August 23, 1985~~] (new date)
- (8) "H-8, Kealakekua," Hawaii, June 4, 1978
- (9) "H-9, Honaunau," Hawaii, December 14, 2001
- (10) "H-10, Kaulua Point," Hawaii, June 4, 1978
- (11) "H-11, Milolii," Hawaii, August 23, 1985
- (12) "H-12, Manuka Bay," Hawaii, June 4, 1978
- (13) "H-13, Hawi," Hawaii, June 4, 1978
- (14) "H-14, Kawaihae," Hawaii, June 4, 1978
- (15) "H-15, Puu Hinai," Hawaii, June 4, 1978
- (16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
- (17) "H-17, Hualalai," Hawaii, June 4, 1978
- (18) "H-18, Puu Lehua," Hawaii, June 4, 1978
- (19) "H-19, Kaunene," Hawaii, June 4, 1978
- (20) "H-20, Puu Pohakuloa," Hawaii, [~~August 23, 1985~~] (new date)
- (21) "H-21, Papa," Hawaii, [~~June 4, 1978~~] (new date)
- (22) "H-22, Pohue Bay," Hawaii, August 23, 1985
- (23) "H-23, Puu Hou," Hawaii, June 4, 1978
- (24) "H-24, Honokane," Hawaii, June 4, 1978
- (25) "H-25, Kamuela," Hawaii, June 4, 1978
- (26) "H-26, Nohoahoe," Hawaii, June 4, 1978
- (27) "H-27, Keamuku," Hawaii, June 4, 1978
- (28) "H-28, Naohueleehua," Hawaii, August 23, 1985
- (29) "H-29, Puu O Uo," Hawaii, August 23, 1985
- (30) "H-30, Sulphur Cone," Hawaii, August 23, 1985
- (31) "H-31, Alike Cone," Hawaii, June 4, 1978

- (32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
- (33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978
- (34) "H-34, Ka Lae," Hawaii, June 4, 1978
- (35) "H-35, Kukuihaele," Hawaii, June 4, 1978
- (36) "H-36, Makahalau," Hawaii, June 4, 1978
- (37) "H-37, Ahumoa," Hawaii, June 4, 1978
- (38) "H-38, Puu Koli," Hawaii, June 4, 1978
- (39) "H-39, Kokoolau," Hawaii, June 4, 1978
- (40) "H-40, Mauna Loa," Hawaii, June 4, 1978
- (41) "H-41, Keaiwa Reservoir," Hawaii, June 4, 1978
- (42) "H-42, Punaluu," Hawaii, [~~August 23, 1985~~]  
(new date)
- (43) "H-43, Naalehu," Hawaii, [~~June 4, 1978~~]  
(new date)
- (44) "H-44, Honokaa," Hawaii, June 4, 1978
- (45) "H-45, Umikoa," Hawaii, June 4, 1978
- (46) "H-46, Mauna Kea," Hawaii, June 4, 1978
- (47) "H-47, Puu Oo," Hawaii, June 4, 1978
- (48) "H-48, Puu Ulaula," Hawaii, June 4, 1978
- (49) "H-49, Kipuka Pakekake," Hawaii, June 4, 1978
- (50) "H-50, Wood Valley," Hawaii, June 4, 1978
- (51) "H-51, Pahala," Hawaii, June 4, 1978
- (52) "H-52, Kukaiau," Hawaii, June 4, 1978
- (53) "H-53, Keanakolu," Hawaii, June 4, 1978
- (54) "H-54, Puu Akala," Hawaii, June 4, 1978
- (55) "H-55, Upper Piihonua," Hawaii, June 4, 1978
- (56) "H-56, Kulani," Hawaii, June 4, 1978
- (57) "H-57, Kilauea Crater," Hawaii, August 23, 1985
- (58) "H-58, Kau Desert," Hawaii, June 4, 1978
- (59) "H-59, Naliikakani Point," Hawaii, June 4, 1978
- (60) "H-60, Papaaloa," Hawaii, October 22, 1993
- (61) "H-61, Akaka Falls," Hawaii, November 23, 1987
- (62) "H-62, Piihonua," Hawaii, June 4, 1978
- (63) "H-63, Puu Makaala," Hawaii, June 4, 1978
- (64) "H-64, Volcano," Hawaii, June 4, 1978
- (65) "H-65, Makaopuhi Crater," Hawaii, June 4, 1978

- (66) "H-66, Papaikou," Hawaii, June 4, 1978
- (67) "H-67, Hilo," Hawaii, June 4, 1978
- (68) "H-68, Mountain View," Hawaii, June 4, 1978
- (69) "H-69, Kalalua," Hawaii, June 4, 1978
- (70) "H-70, Kalapana," Hawaii, August 23, 1985
- (71) "H-71, Keaau Ranch," Hawaii, June 4, 1978
- (72) "H-72, Pahoa North," Hawaii, June 4, 1978
- (73) "H-73, Pahoa South," Hawaii, June 4, 1978
- (74) "H-74, Kapoho," Hawaii, June 4, 1978
- (75) "M-1, Honolua," Maui, June 4, 1978
- (76) "M-2, Lahaina," Maui, June 4, 1978
- (77) "M-3, Olowalu," Maui, June 4, 1978
- (78) "M-4, Kahakuloa," Maui, June 4, 1978
- (79) "M-5, Wailuku," Maui, [~~June 4, 1978~~] (new date)
- (80) "M-6, Maalaea," Maui, June 4, 1978
- (81) "M-7, Paia," Maui, June 4, 1978
- (82) "M-8, Puu O Kali," Maui, June 4, 1978
- (83) "M-9, Makena," Maui, June 4, 1978
- (84) "M-10, Haiku," Maui, [~~August 23, 1985~~] (new date)
- (85) "M-11, Kilohana," Maui, August 23, 1985
- (86) "M-12, Lualailua," Maui, June 4, 1978
- (87) "M-13, Keanae," Maui, June 4, 1978
- (88) "M-14, Nahiku," Maui, June 4, 1978
- (89) "M-15, Kaupo," Maui, [~~June 4, 1978~~] (new date)
- (90) "M-16, Hana," Maui, August 23, 1985
- (91) "M-17, Kipahulu," Maui, July 25, 1988
- (92) "Mo-1, Ilio Point," Molokai, June 4, 1978
- (93) "Mo-2, Molokai Airport," August 23, 1985
- (94) "Mo-3, Kaunakakai," Molokai, August 23, 1985
- (95) "Mo-4, Kamalo," Molokai, June 4, 1978
- (96) "Mo-5, Halawa," Molokai, June 4, 1978
- (97) "Lanai," June 4, 1978
- (98) "Kahoolawe," June 4, 1978
- (99) "O-1, Kaena," Oahu, [~~June 4, 1978~~] (new date)
- (100) "O-2, Waianae," Oahu, December 13, 2002
- (101) "O-3, Waimea," Oahu, June 4, 1978

- (102) "0-4, Haleiwa," Oahu, August 23, 1985
- (103) "0-5, Schofield Barracks," Oahu, June 4, 1978
- (104) "0-6, Ewa," Oahu, June 4, 1978
- (105) "0-7, Kahuku," Oahu, June 4, 1978
- (106) "0-8, Hauula," Oahu, June 4, 1978
- (107) "0-9, Waipahu," Oahu, June 4, 1978
- (108) "0-10, Puuloa," Oahu, August 23, 1985
- (109) "0-11, Kahana," Oahu, March 24, 1994
- (110) "0-12, Kaneohe," Oahu, [~~March 24, 1994~~]  
(new date)
- (111) "0-13, Honolulu," Oahu, [~~August 23, 1985~~]  
(new date)
- (112) "0-14, Mokapu," Oahu, August 23, 1985
- (113) "0-15, Koko Head," Oahu, [~~August 23, 1985~~]  
(new date)
- (114) "K-1, Makaha Point," Kauai, June 4, 1978
- (115) "K-2, Kekaha," Kauai, June 4, 1978
- (116) "K-3, Haena," Kauai, August 12, 1992
- (117) "K-4, Waimea Canyon," Kauai, June 4, 1978
- (118) "K-5, Hanapepe," Kauai, June 4, 1978
- (119) "K-6, Hanalei," Kauai, June 4, 1978
- (120) "K-7, Waialeale," Kauai, June 4, 1978
- (121) "K-8, Koloa," Kauai, August 23, 1985
- (122) "K-9, Anahola," Kauai, June 9, 2006
- (123) "K-10, Kapaa," Kauai, June 9, 2006
- (124) "K-11, Lihue," Kauai, August 23, 1985



Exhibit 2

Special Subzones: September 6, 1994

- (1) Hawaii Loa college special subzone. Subzone designation for educational purposes as delineated on map entitled "O-12, Kaneohe<sub>L</sub>"[<sub>T</sub>] Oahu;
- (2) Haka site special subzone. Subzone designation for cemetery purposes as delineated on map entitled "O-12, Kaneohe<sub>L</sub>"[<sub>T</sub>] Oahu;
- (3) Kapakahi Ridge special subzone. Subzone designation for nursing or convalescent home purposes as delineated on map entitled "O-13, Honolulu<sub>L</sub>"[<sub>T</sub>] Oahu;
- (4) Sea Life park special subzone. Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "O-15, Koko Head<sub>L</sub>"[<sub>T</sub>] Oahu;
- (5) Milolii-Hoopuloa special subzone. Subzone designation for Milolii-Hoopuloa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991, as delineated on map entitled "H-11, Milolii<sub>L</sub>"[<sub>T</sub>] Hawaii;
- (6) Hale O Ho'oponopono special subzone. Subzone designation for educational purposes as delineated on map entitled "H-9, Honaunau<sub>L</sub>"[<sub>T</sub>] Hawaii;
- (7) Limahuli Valley special subzone. Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-3, Haena<sub>L</sub>"[<sub>T</sub>] Kauai.

## Exhibit 3

Management Plan Requirements: [~~September 6, 1994~~] (new date)

- 1     General [~~Description~~] ~~description of the proposed use (e.g., forestry, fishpond, astronomy, aquaculture, agriculture).~~ [~~Proposed land use in general terms~~  
~~How proposed land use is consistent with the purpose of the conservation district and the property's subzone~~  
~~Location map, drawn to scale]~~
- ~~[2   Existing conditions on parcel~~  
~~Ownership~~  
~~Resources (e.g. biological, archeological, geological)~~  
~~Presence of threatened or endangered species~~  
~~Constraints (e.g. flood plain, tsunami, volcanic, topography)~~  
~~Existing land uses~~  
~~Existing Conservation District Use Permits (CDUPs)~~  
~~Access~~  
~~Soils~~
- 3     ~~Proposed land uses on parcel~~  
~~For each proposed land use:~~  
~~Description of proposed land use~~  
~~Site plan~~  
~~Justification that it is an identified land use for the subzone~~  
~~Relationship to existing and other proposed land uses~~  
~~Expected timing~~  
~~Monitoring strategies~~  
~~Environmental assessment~~  
~~Site plan showing location of all existing and proposed land uses~~  
~~Steps to ensure that historic preservation concerns are met]~~
- 2     Project location (e.g., island map, location map, site plan (drawn to scale)).

- 3 Natural resource assessment including descriptive information about the natural resources in the project vicinity such as biological, archaeological, cultural, geological, coastal, recreational, and scenic resources, where applicable. The presence of any threatened or endangered species shall be disclosed.
  - 4 Natural hazard assessment including descriptive information of erosion, flooding, slope, tsunami, and volcanic hazards, where applicable.
  - 5 A description of best management practices used during project construction and implementation (e.g., mitigation measures).
  - 6 A description of the best management practices to be used during the lifetime of the project (e.g., mitigation measures).
  - 7 A description of the conservation methods and applications to be used in the short term and long term (e.g., mitigation measures).
  - 8 Description of existing uses and facilities, if any.
  - 9 Description of proposed facilities and uses, including phases, if applicable.
- [4]10[Reporting] Activity schedule
- [~~Time duration of management plan (start and end dates)~~
  - [~~Annual reporting schedule~~]  
Project schedule including description of project sequencing from project construction to project completion and on-going maintenance plans, including a description and timing of natural resource monitoring and maintenance plans
    - [~~Annual reporting requirements~~] A description of the reporting frequency.
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[5]11 Any other information or data, as required by  
the department.

Exhibit 4

Single Family Residential Standards: [~~September 9,~~  
2005] (new date)

~~[Minimum Lot Size: 10,000 square feet~~

~~Exceptions:~~

~~1) Kuleana~~

~~2) nonconforming use~~

~~3) lots designated as "Good-  
Interior House Lots" or "Good-  
House Lots on Road" on  
Exhibit "C" of the Final  
Order in partition entered  
October 20, 1967, in  
Allerton, et al. v. Heirs of  
Ahi, et al., Civil No. 30,  
Fifth Circuit Court, State of  
Hawaii.]~~

Minimum Setback: For lots under [~~10,000 square feet~~  
~~to~~] one acre:

Front: 15 feet  
Sides: 15 feet  
Back: 15 feet

For lots over one acre:

Front: 25 feet  
Sides: 25 feet  
Back: 25 feet

Allowable building area  
extensions 36 inches in 15-  
foot setback 42 inches in 25-  
foot setback (e.g., eaves and  
decks).

Exceptions: Site  
characteristics and lot shape  
may be a factor in adjusting

minimum setbacks when so determined by the board.

Shoreline Setback: The shoreline setback line shall be established based on a setback distance from the certified shoreline of 40 feet plus 70 times the average annual coastal erosion rate, based on a coastal erosion study as defined in this chapter. No shoreline setback shall be established for any lot subject to this chapter unless the application for a shoreline setback line includes a shoreline survey certified by the department not more than 12 months prior to submission of the permit application. The average lot depth shall be measured from the current shoreline.

For lots with an average depth<sup>1</sup> of two hundred feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1.

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<sup>1</sup> Average lot depth (ALD) shall be calculated by measuring the two sides of the property that are at or near right angles to the shoreline. Next, measure the length of a line connecting the mid-point of the seaward (shoreline) side of the property to the mid-point of the landward side of the property. Now add these three (right, left, center lines) measurements together for a total. Divide the total by three to obtain the ALD.

Table 1

<u>If the average lot depth is:</u>	<u>100 feet or less</u>	<u>101 to 120 feet</u>	<u>121 to 140 feet</u>	<u>141 to 160 feet</u>	<u>161 to 180 feet</u>	<u>181 to 200 feet</u>
<u>Then the minimum setback distance is:</u>	<u>40 feet</u>	<u>50 feet</u>	<u>60 feet</u>	<u>70 feet</u>	<u>80 feet</u>	<u>90 feet</u>

The department may waive the requirement for coastal erosion study based on supportive documentation from the applicant. Such documentation may include, but is not limited to, county or state approved coastal erosion rate data provided through the University of Hawaii, School of Ocean, Earth Science, and Technology, evidence that the erosion rate is zero, or if the landowner volunteers to place a structure at a greater distance than the minimum setback as provided in Table 1.

Maximum Developable Area (MDA): Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: ~~[all enclosed (on three sides minimum, with floor or roof structure~~

~~above) living areas; above-grade decks in excess of 4'-0" in width;] all floor areas under roof, including first, second, and third story areas, decks; garage or carport [÷]. [swimming pools, saunas or other developed water features (excluding naturally existing ponds, tidepools, etc.); play courts; or any other standing structures, which are accessory to the approved land use.]~~

In addition to the MDA, additional accessory structures may be allowed when so determined by the department or board. Examples include: swimming pools, saunas, developed water features, water storage tanks, play courts, barns, sheds, and other standing structures. The total combined area of accessory structures shall not exceed 2,000 square feet.

For lots up to 14,000 square feet, the maximum developable area is 25 percent of total lot area.

For lots [~~10,000~~] over 14,000 sq. ft. to one (1) acre [÷] the maximum developable area is 3,500 square feet.



For lots larger than one (1) acre [÷] the maximum developable area is 5,000 square feet.

Exceptions: Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board.

#### Maximum Height

Limit: The maximum height of the building shall not exceed twenty-five feet measured from the highest point of the roof structure (excluding any allowed chimney, antenna, vents, or similar protrusions) down to the lower of the existing [~~or finished~~] grade at the lowest corner of the building.

Exceptions: [~~Tsunami or flood-prone areas~~] Areas within the flood zone may allow consideration for additional height limits to [satisfy flood insurance ordinances] comply with the National Flood Insurance Program requirements when so determined by the board.

Compatibility

- Provisions: Compatibility with surrounding environs. Structure is designed in accordance with standard conditions [7] and criteria, including:
- Landscaping - screening of structures
  - Color of paint/surface of structure and roof - earth tones, or compatible with surrounding area
  - DOH wastewater permit/water collection system approval
  - Grading/contouring of property kept to minimum with consideration of slope
  - All structures connected, or best alternative
  - In conformance to applicable building and grading code and shoreline setback provisions
  - One kitchen [4]<sup>2</sup>

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<sup>2</sup>[4] "Kitchen" means a facility within the residential dwelling for food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook and refrigerate food and wash cooking utensils and dining implements.

Exhibit 5:

Fire Protection Zone Standards: (new date)

Design standards for creation and maintenance of fire protection zones along the urban/conservation interface. Fire buffer zones shall be approved via site plan approval.

PURPOSE The goal of a fire buffer zone is to reduce the risk of fire spreading to an area, and to reduce the speed at which fire spreads, should one occur. This is accomplished by 1) reducing the amount of available fuels, 2) reducing the continuity of available fuels, both horizontally through the proper spacing of trees and shrubs, and vertically by removing the ladder of fuels that can carry fire from the surface to the tree crowns, 3) developing a high-canopy forest, 4) replacing highly-flammable flora with drought and fire resistant indigenous, endemic, and/or Polynesian-introduced species, and 5) encouraging community stewardship of lands in the Conservation District.

REQUIREMENTS

- Parcel is considered a high-risk fire prone area by an authority recognized by the department(e.g., Division of Forestry and Wildlife, or the County Fire Department).
- If landscaping is to occur on neighboring parcels the applicant should have permission of the neighboring landowner. The chairperson may sign as landowner for parcels owned by the State.
- A Site Plan should include three elements: (1) maps and surveys, (2) an implementation plan, and(3) a maintenance plan.
- Maps for the area should identify: topography, drainage patterns, land ownership, dominant flora

and fauna, trees greater than ten inches in diameter measured at 4.5 foot above the ground, any indigenous, endemic, or Polynesian-introduced trees or shrubs, infrastructure, and known historical or archaeological sites.

- The implementation plan should show the final design of the fire protection zone, and identify each, if any, native or indigenous tree that the applicant desires to remove.
- The management plan should discuss how and when the fire protection zone will be maintained.
- The size of the fire buffer will be based upon the slope of the area, as shown in Figure 1. Distances are measured from the outside of the main structure, as measured from the outside eaves and/or any attached structures.

<u>FIGURE 1: AREA OF DEFENSIBLE SPACE</u>		
<u>ZONE</u>	<u>SLOPE</u>	<u>DEFENSIBLE SPACE</u>
<u>1 Area of maximum reduction</u>	<u>all</u>	<u>0-15 feet</u>
<u>2 Area of fuel reduction</u>	<u>0-20%</u>	<u>15-30 feet</u>
	<u>21-40%</u>	<u>15-50 feet</u>
	<u>&gt;40%</u> <u>—</u>	<u>15-70 feet</u>
<u>3 Transition Zone</u>	<u>0-20%</u>	<u>30-75 feet</u>
	<u>21-40%</u>	<u>50-100 feet</u>
	<u>&gt;40%</u>	<u>70-125 feet</u>

#### DESIGN ELEMENTS

The following are acceptable design elements for each zone:

Zone 1:

- Removal of all flammable vegetation.
- Pruning of existing trees to a height of ten feet above the ground or to one-half the height of the tree, whichever is the lowest.
- Planting of drought and fire resistant indigenous, endemic, or Polynesian-introduced trees and shrubs, along with associated soil improvements and mulching.
- Removal of all ladder fuels beneath existing trees.

Zone 2:

- Thinning of trees and shrubs so that they stand solo, or in clumps of two or three. Recommended space between crowns is based upon slope, as summarized in Figure 2.

<u>FIGURE 2: MINIMUM TREE AND SHRUB SPACING FOR ZONE 2</u>		
<u>SLOPE</u>	<u>TREE CROWN SPACING</u>	<u>SHRUB CLUMP SPACING</u>
<u>0-10%</u>	<u>10 feet</u>	<u>2½ x shrub height</u>
<u>11-20%</u>	<u>15 feet</u>	<u>3x shrub height</u>
<u>21-40%</u>	<u>20 feet</u>	<u>4x shrub height</u>
<u>&gt;40%</u>	<u>30 feet</u>	<u>6x shrub height</u>

- Removal of ladder fuels.
- Mowing or cutting grasses as needed to keep them at a maximum height of 6-8 inches.
- Pruning of tree branches to a height of at least ten feet.
- Replanting of drought and fire resistant indigenous, endemic or Polynesian-introduced trees and shrubs,

along with associated soil improvements and mulching.

- Removal of dead trees.
- Annual maintenance thinning of trees as they grow in size.
- Annual removal of dead stems and branches.

Zone 3:

- Thinning of trees, with spacing based upon the tree diameter measured at 4.5 foot above the ground, as outlined in Figure 3.

FIGURE 3: MINIMUM TREE SPACING FOR ZONE 3

<u>Tree Diameter (inches)</u>	<u>Average Stem Spacing (feet)</u>
<u>3</u>	<u>10</u>
<u>4</u>	<u>11</u>
<u>5</u>	<u>12</u>
<u>6</u>	<u>13</u>
<u>7</u>	<u>14</u>
<u>8</u>	<u>15</u>
<u>9</u>	<u>16</u>
<u>10</u>	<u>17</u>
<u>11</u>	<u>19</u>
<u>12</u>	<u>21</u>
<u>13</u>	<u>23</u>

<u>Tree Diameter (inches)</u>	<u>Average Stem Spacing (feet)</u>
<u>14</u>	<u>24</u>
<u>15</u>	<u>26</u>
<u>16</u>	<u>28</u>
<u>17</u>	<u>29</u>
<u>18</u>	<u>31</u>
<u>19</u>	<u>33</u>
<u>20</u>	<u>35</u>
<u>21</u>	<u>36</u>
<u>22</u>	<u>38</u>
<u>23</u>	<u>40</u>
<u>24</u>	<u>42</u>

- Pruning of tree branches to a height of at least ten feet along fire or access roads.
- Annual maintenance thinning as trees grow in size.

#### MAINTENANCE GUIDELINES

Zones 2 and 3 are subject to the following maintenance guidelines:

- Any thinning of indigenous or endemic trees needs written permission from the Office of Conservation and Coastal Lands.
- Harvesting of individual trees for traditional cultural uses will need written permission from the Office of Conservation and Coastal Lands.
- Any replanting should only be done with indigenous, endemic, or Polynesian-introduced trees and shrubs with written permission of the Office of Conservation and Coastal Lands.
- No grubbing or grading is allowed for this land use.
- Slash (limbs, branches, and other woody debris) should be disposed of by removing it from site, chipping and distributing over the ground, or lopping and scattering.
- Tree stumps should remain in the ground.
- Surface (drip) irrigation lines are allowed to support new plantings with permission of the Office of Conservation and Coastal Lands.
- Applicant should provide the Office of Conservation and Coastal Lands with photographs of completed work.